

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 608 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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RAJKUMARI @ KOMAL

Versus

GIRDHARILAL TENUMAL MOTWANI

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Appearance:

MR DN TRIVEDI for Petitioner

MR JS YADAV for Respondent No. 1

Y.F.Mehta APP for Respondent No. 2

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 05/11/96

ORAL JUDGEMENT

Rajkumari alias Komal wife of Girdharlal Tenumal Motwani has filed the present petition seeking to quash the criminal case No.3530/95 filed by the respondent no.1 against her.

2. The respondent no.1 is admittedly the husband of the present petitioner. He has filed this complaint bearing cri.case no. 3530/95 in the court of the learned Metropolitan Magistrate, Court no.9, Ahmedabad. In the complaint itself the complainant has clearly admitted that his wife has filed a complaint against him and other for the alleged offences u/ss. 403,406,420 and 114 IPC. Thus in the complaint itself the complainant has disclosed that there is a prosecution against him by his wife. Therefore, in view of this background, the complaint filed by the complainant will have to be considered. I am aware that I am considering the present complaint for the purpose of quashing the proceedings by exercising the powers u/s 482 Cr.P.C. Therefore, I cannot have the powers of appreciation of evidence at this stage. I can exercise the powers under section 482 to quash the proceedings only in case if after giving face value to the averments made in the complaint and if I come to the conclusion that no prudent man would ever believe the averments made in the complaint I can reach a conclusion that there was no sufficient ground to proceed further in the matter. In the case of Punjab National Bank vs. Surendra Prasad Sinha AIR 1992 (SC) 1815 the Apex Court has laid down the following principles:

"Judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complainant as vendetta to harass the person needlessly."

Therefore, bearing in mind the aforesaid observations of the Apex court and the principles under lying exercising of the powers under section 482 Cr.P.C. I proceed to consider the averments made in the complaint.

3. The respondent has admitted in his complaint that that the ornaments mentioned by him in his complaint were given by him to the present petitioner. No doubt, he had added a clause by saying that the said ornaments were given temporarily for the purpose of attending the

marriage ceremony of her brother and that those ornaments were of his first wife. Admittedly, he has divorced his first wife. When he has divorced his first wife and he has married second time, it is not probable that he would keep the ornaments with him and would not give those ornaments to his second wife. No prudent man would accept his claim that after divorcing his first wife he had kept his ornaments with him though he had married second time. Therefore, in the circumstances, the claim made by him in his complaint that his wife cheated him by not returning his ornaments and that she has misappropriated his ornaments, could not be believed by any prudent man. Therefore, in the circumstances, I hold that present petition will have to be allowed by quashing the prosecution of cri. case no. 3530/95. In the circumstances the petition is allowed. Cri. Case No. 3530/95 on the file of learned Metropolitan Magistrate, Court no.9, Ahmedabad is hereby quashed and set aside. Rule is made absolute.

(S.D.Pandit.J)